

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTA McAULIFFE INTERMEDIATE SCHOOL
PTO, INC., et al.,

Plaintiffs,

-against-

BILL DE BLASIO, et al.,

Defendants.

**DECLARATION OF
ERIC ASHTON**

1:18-cv-11657-ER-OTW

Eric Ashton declares under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an employee of the New York City Department of Education (“DOE”). I hold the position of Executive Director of School Performance.
2. Among the duties of my position are supervising the calculation of the Economic Need Index (“ENI”) for the public schools operated by DOE. I have held this position for seven years and have been employed by DOE for eighteen years. I submit this declaration in support of Defendants’ motion for summary judgment in the above-captioned action. The statements made herein are based on my personal knowledge, the books and records of DOE and discussions with other DOE employees.
3. The ENI is a measure of the overall economic need of the student body of a DOE school. It was originally created by DOE in 2012 and the methodology was improved to the formula described here in 2015. It is used to measure economic disadvantage, and DOE has found the ENI to be a more effective measure of economic disadvantage in many contexts than other

measures of poverty. The ENI of a school provides an estimate of the percentage of students in that school facing economic hardship.

4. There is extensive social science research that supports the conclusion that students attending high-poverty schools are more disadvantaged and face more academic challenges than similarly-situated students attending lower-poverty schools. See, e.g., *Annotated Bibliography: The Impact of School-Based Poverty Concentration on Academic Achievement & Student Outcomes*, Poverty & Race Research Action Council, (summarizing the extensive research showing the adverse effects of attendance at high-poverty schools on academic achievement and other student outcomes) https://www.prrac.org/pdf/annotated_bibliography_on_school_poverty_concentration.pdf; Kennedy, Mary M., et al., *Poverty, Achievement and the Distribution of Compensatory Education Services: An Interim Report from the National Assessment of Chapter 1*, Office of Educational Research and Improvement, Washington D.C., 1986, p. 30 (the relationship between school poverty concentrations and student achievement averages is stronger than the relationship between family poverty status and student achievement).

5. The ENI is calculated based upon the average of the Economic Need Values ("ENV") of the students attending the school.

6. A student's ENV is 1.0 if: (a) the student lives in a household that is eligible for public assistance from the New York City Human Resources Administration; (ii) the student lived in temporary housing in the past four years; or (iii) the student is in high school, has a home language other than English and enrolled in a DOE school for the first time within the past four years.

7. For purposes of determining a student's ENV, eligibility for public assistance from the New York City Human Resources Administration ("HRA") is defined as eligibility for any of

the following programs: the Supplemental Nutrition Assistance Program (“SNAP”), 7 U.S.C. § 2011, *et seq.*, which was formerly known as the Food Stamp Program; the Temporary Assistance for Needy Families Program (“TANF”) 42 U.S.C. § 601, *et seq.*; Medicaid, 42 U.S.C. 1396, *et seq.*; and the Special Supplemental Nutrition Program for Women, Infants, And Children (“WIC”), 42 U.S.C. § 1786.

8. If a student does not meet any of the above criteria, then the student’s ENV is calculated based on the percentage of families (with school-age children) in the student’s census tract whose income is below the poverty income level, as estimated by the United States Census Bureau’s American Community Survey Five-Year estimate (2019 ACS estimates were used in calculations for the 2020-21 ENI). The student’s ENV equals this percentage divided by 100. For example, if 75% of the families in the student’s census tract have income below the federal poverty line, then the student will have an ENV of 0.75.

The New York State Direct Certification Matching Process

9. The free and reduced price lunch program was created by the National School Lunch Act (“the Act”), which was enacted in 1946. 42 U.S.C. § 1751, *et seq.* The Act established the National School Lunch Program (“the Program”), which is administered by the Food and Nutrition Service of the United States Department of Agriculture (“USDA”). The Program provides a federally-assisted meal program which is operated in public and nonprofit private schools and residential child care institutions. <http://www.cn.nysed.gov/national-lunch-program>.

10. The statute provides that students whose family income is equal to or less than 130% of the applicable family-size federal poverty income level are eligible for free lunch and students whose family income is between 130 and 185% of the applicable family-size federal poverty income level are eligible for reduced price lunch. 42 U.S.C. § 1758(b)(1)(A).

11. Traditionally, a family that wanted free or reduced price lunches for their student would submit a household application which provided information about the household's income. 42 U.S.C. § 1758(b)(3)(B)(i).

12. In 2004, the Act was amended to provide that students whose families participated in the Food Stamp Program, now called the Supplemental Nutrition Assistance Program or "SNAP", shall be directly certified as eligible for free lunches without further certification. 42 U.S.C. § 1758(b)(4)(B),(C).

13. "Direct Certification is the process that enables children from families receiving SNAP to receive free meals or free milk at school without having to complete an application. Direct Certification results in more students gaining access to the school nutrition programs because some parents do not complete application forms correctly or do not submit applications." <http://www.cn.nysed.gov/book/export/html/2922>.

14. In 2008, the Act was amended to require that the USDA submit an Annual Report to Congress, describing the progress that the states have made in complying with the direct certification requirement. 42 U.S.C. § 1758a. The Annual Report submitted by the USDA to Congress in October 2018 is annexed hereto as Exhibit "A."

15. The Act also required that by school year 2013-14, the states directly certify 95% of the total number of school-age children in the state who are eligible for direct certification based on the family's participation in the food stamp program. 42 U.S.C. § 1758(b)(4)(F)(i)(III).

16. The Annual Report annexed as Exhibit A provides, *inter alia*, state-level data showing the percentage of school-age children eligible for direct certification who were directly certified in school year 2016-2017. The percentage for New York State was 84%, while the national average for all states was 92%. (Exh. A, p. 3).

17. The Annual Report notes that states may perform the data matching process that results in direct certification (by comparing school register data to SNAP participation data) at either the state level or the local level, and that it is generally more efficient and accurate for the matching process to be performed at the state level. (Exh. A, pp. 4-5).

18. The Annual Report then provides descriptive examples of three states that have experience with the issues created by local-level matching. One of the three is New York. (Exh. A, p. 7). The Annual Report states that in response to these issues, beginning in the 2017-2018 school year, New York State will implement a state-level direct certification matching program. *Id.*

19. New York State did implement state-level direct certification beginning in September 2017. The New York State Department of Education implements the Direct Certification Matching Process (“DCMP”).

20. While direct certification is mandatory for students whose families participate in the SNAP program, 42 U.S.C. § 1758(b)(4)(A)-(C), states also have discretion to use direct certification for students whose families participate in the Medicaid program (subject to income requirements) 42 U.S.C. §§ 1758(b)(3)(F)(i)(IV), 1758(b)(3)(F)(ii)II), and/or in the Temporary Assistance for Needy Families (“TANF”) program. 42 U.S.C. § 1758(b)(5)(A). States also have discretion to use direct certification for certain students who are homeless, runaways, migrants or in foster care. 42 U.S.C. § 1758(b)(5)(B)-(E).

21. In addition, direct certification may be used for students whose families participate in the WIC program, the special supplemental nutrition program for women, infants, and children. 42 U.S.C. § 1758(b)(2)(B)(II)(aa).

22. New York State has chosen to utilize the discretionary forms of direct certification. Thus, New York State uses direct certification based on participation by the student's family in the Medicaid program, the TANF program, the WIC program and the SNAP program. New York State also uses direct certification, *inter alia*, for certain students who are homeless, runaways, migrants or in foster care. <http://www.cn.nysed.gov/book/export/html/2922>; <https://otda.ny.gov/workingfamilies/schoollunch.asp>; <http://www.cn.nysed.gov/common/cn/files/2021policybooklet.pdf>, pp. 14-17.

23. Before the start of the 2017-18 school year, the New York State Education Department implemented the DCMP that, as described above, refined the methods to identify families eligible for free lunch. The DCMP provides a more efficient and accurate process for matching students across a range of forms that families already complete and yielded an increase in both the number of students directly certified for free lunch and the number of students whose families were identified as participating in the four relevant public assistance programs administered by the New York City Human Resources Administration. This resulted in an increase in the percent of students identified as being in poverty and in the percent of students with an ENV of 1.0.

24. The DOE calculates ENI on an annual basis for each school. Near the end of the 2017-18 school year, DOE used the data provided by the improved DCMP to perform the annual calculation of the ENV of individual students and then to calculate the ENI of DOE schools for the 2017-18 school year. The significant increase in the number of DOE students who were directly certified for free lunch resulted in an increase in the ENI of many schools. As a result, the number of middle schools that had ENIs of 0.6 or above increased from 404 middle schools in the 2016-2017 school year before DCMP was implemented to 505 middle schools in the 2017-2018

school year after DCMP was implemented. There were 503 middle schools with an ENI of 0.6 or above in the 2018-2019 school year, 527 such middle schools in the 2019-2020 school year and 538 such middle schools in the 2020-2021 school year. <https://infohub.nyced.org/docs/default-source/default-document-library/demographic-snapshot-2016-17-to-2020-21-public.xlsx>.

25. A similar increase in the number of schools with an ENI of 0.6 or above is shown when the data for all DOE schools is examined. The number of DOE schools with an ENI of 0.6 or above was as follows: 1,172 schools in school year 2016-2017; 1,457 schools in school year 2017-018; 1,480 schools in school year 2018-2019; 1,531 schools in school year 2019-2020 and 1,523 schools in school year 2020-2021.

26. The ENIs based on the improved DCMP process for the 2017-2018 school year were published by DOE on April 2018.

27. As can be seen from the above data, the DCMP initiated by New York State for school year 2017-2018 has continued, with modifications, for each school year since 2017-2018, with similar results; the number of DOE students who are directly certified for free school lunches and identified as students of families that participate in public assistance programs administered by the New York City Human Resources Administration has continued at a level significantly higher than the number identified prior to the 2017-2018 school year, with a continued concomitant higher number of schools with ENI of 0.6 or above.

Dated: Rodport Maine
September 30, 2021


Eric Ashton